

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HERBERT C. GRIFFIN,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

Case No. C17-308-RAJ

**ORDER DENYING APPLICATION
FOR COURT-APPOINTED
COUNSEL**

Plaintiff, Herbert C. Griffin, proceeds pro se and in forma pauperis in this civil action seeking review of the Commissioner's denial of Social Security benefits. Dkts. 1, 3, 4. Plaintiff now moves for court-appointed counsel to assist with his appeal. Dkt. 5. For the reasons discussed below, this application is DENIED.

There is no absolute right to counsel in a civil action such as this one. *See Hedges v. Resolution Trust Corp.*, 32 F.3d 1360, 1363 (9th Cir. 1994). Under 28 U.S.C. 1915(e)(1), the Court may appoint counsel for civil litigants "unable to afford counsel", but may do so only in "exceptional circumstances." *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991) (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)); 28 U.S.C. 1915(e)(1). In assessing whether "exceptional circumstances" exist, the Court will consider "the likelihood of success on

1 the merits as well as the ability of the [plaintiff] to articulate his claims pro se in light of the
2 complexity of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).
3 Neither of these factors is dispositive and both must be viewed together before reaching a
4 decision[.]” *Wilborn*, 789 F.2d at 1331.

5 At this early stage, plaintiff presents insufficient evidence to establish a likelihood of
6 success on the merits. Dkt. 4. In response to the question of whether another agency has
7 “officially determined whether there is reasonable cause to believe the allegations of your
8 complaint are true[.]” the plaintiff alludes to a determination by California Health and Human
9 Services. Dkt. 5. However, plaintiff includes no documentation of that alleged determination
10 and the plaintiff’s mere reference to a determination offers little additional insight into the
11 potential merits of his claims. *Id.* Moreover, plaintiff does not allege or explain in his motion
12 how or why the complexity of the issues in this case would prevent him from articulating his
13 claims pro se. Dkt. 4. In fact, based on the complaint, plaintiff’s claim appears relatively clearly
14 articulated and to raise fairly straight-forward issues. *Id.* Specifically, plaintiff indicates that he
15 tore both of his rotator cuffs and was diagnosed with Type II diabetes which caused him to
16 become ill and experience weight loss, blurred vision and body pains. *Id.* Plaintiff indicates the
17 ALJ overlooked or did not properly consider the medical evidence or the testimony of the
18 vocational expert in reaching her decision. *Id.* Based on the limited information available thus
19 far in the proceeding, plaintiff appears able to articulate his claims relatively well pro se.
20 Plaintiff, therefore, has not presented exceptional circumstances that would justify appointing
21 counsel at this time.

1 For the foregoing reasons, plaintiff's application for court-appointed counsel (Dkt. 4) is
2 DENIED without prejudice.

3 DATED this 29th day of March, 2017.
4
5

6 
7

8 The Honorable Richard A. Jones
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23